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a2  
a body;

a protective portion of the body configured to be penetration resistant;

a less protective portion of the body adjacent to the protective portion; and

a bead of material formed between the protective portion and the less protective portion.

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**Response to Office Action mailed October 23, 2002**

**A. Claims in the Case**

Claims 1-35 are pending. Claims 5 and 35 have been amended.

**B. Objected to Claim**

The Examiner objected to claim 5 because of a typographical error. Claim 5 has been amended to correct the error.

**C. The Claim is Not Anticipated Pursuant to 35 U.S.C. § 102(b)**

The Examiner rejected claim 35 as being anticipated by Sorrels (U.S. Pat. No. 5,450,626.) Amended claim 35 describes a guard for a digit of a hand with combination of features, including "a bead of material formed between the protective portion and the less protective portion." Applicant submits that Sorrels (5,450,626) does not appear to teach or suggest a guard for a digit of a hand with a combination of features including a bead of material formed between the protective portion and the less protective portion. Applicant respectfully requests removal of the anticipation rejection of claim 35.

**D. The Claims Are Not Obvious Pursuant To 35 U.S.C. § 103(a)**

The Examiner rejected claims 1-34 under 35 U.S.C. 103(a) as being unpatentable over Sorrels (U.S. Pat. No. 5,450,626) in view of DeLeo (U.S. Re. No. 36,778). Applicant

respectfully disagrees with this rejection.

In Item 5 of the Office Action, the Examiner states:

DeLeo discloses a guard for a digit (14,16) of the hand including a protective portion which is differently colored/dyed from the less protective portion, col. 3, line 31-col 6, line 15, as a visual indicia in order to ensure that the guard is properly positioned onto the digits and as shown in figures 4 and 6.”

Applicant submits that DeLeo does not appear to teach or suggest a guard including a protective portion and a less protective portion. DeLeo states:

The arrangement is such that the thumb and forefinger can be provided with the distinctive identifying indicia, or alternately, the pinkie and fourth (ring) fingers provided with such indicia. In either instance, the wearer is apprised as to the particular orientation of the indicia, and thereafter is capable of instantly recognizing the markings and donning the glove in the proper manner, i.e. with the thumb and pinkie portions properly oriented with respect to his hand. (DeLeo, col. 4, lines 5-13)

Applicant further submits that DeLeo does not appear to teach or suggest the use of color-coded indicia. In fact, DeLeo appears to be teaching away from the use of color-coded indicia. DeLeo states:

The use of dyes, marker strips, or other marking techniques is thus completely eliminated. Also eliminated are any hazards inherent with the use of dyes, strips, and the like, since in the glove of the present invention, there are no added structural components which might peel off or become misplaced; in addition, since no chemical coloring of any type is employed, the sterility of the gloves is not adversely affected. (DeLeo, col. 6, lines 18-25)

Teaching away from art is a *per se* demonstration of lack of obviousness. *In re Dow Chemical Co.*, 837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988); *In re Fine*, 837, F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Furthermore, an obvious rejection based upon a modification of a reference that destroys the intent, purpose or function of the invention disclosed in the reference, is not proper and the case of obviousness cannot be properly made. *In re Gordon*, 733 F.2d 900,

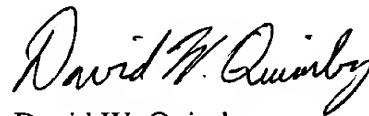
221 USPQ 1125 (Fed. Cir. 1984). Applicant therefore respectfully requests removal of the obviousness rejection of claims 1-34.

**E. Summary**

Applicant submits that the pending claims are in condition for allowance. Favorable reconsideration is respectfully requested.

A two-month extension of time is respectfully requested. A fee authorization is enclosed for the two-month extension of time. If an additional extension of time is needed, Applicant requests the appropriate extension of time. If any additional fees are due, please appropriately charge those fees to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account Number 50-1505/5588-00101/EBM.

Respectfully submitted,



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Date: MARCH 21, 2003



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Atty. Dkt. No.: 5588-00101

**Marked-Up Version Of Amendments Submitted With**  
**Amendment; Response To Office Action Mailed October 23, 2002**

**In the Claims:**

5. (amended) The guard of claim 1, wherein the ~~productive~~ protective portion comprises polytetra-fluoroethylene.

35. (amended) A guard for a digit of a hand, comprising:

a body;

a protective portion of the body configured to be penetration resistant; ~~and~~

a less protective portion of the body adjacent to the protective portion; and

a bead of material formed between the protective portion and the less protective portion.

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